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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,250	12/15/2003	Allan Blase Joseph Rodrigues	FA1200USNA	5816
23906	7590	02/08/2006	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			EVANS, FANNIE L	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/737,250	Applicant(s) RODRIGUES ET AL.	
	Examiner F. L. Evans	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-116 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 7, 10, 11 and 12/6-16/6 is/are allowed.
- 6) ☒ Claim(s) 1, 8, 9, 12/1, 13/1 and 16/1 is/are rejected.
- 7) ☒ Claim(s) 2-5, 14/1 and 15/1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 9 are indefinite in that line 2 of claim 8 refers to the target color of claim 2. Since claim 8 depends from independent claim 6 via claim 7, it appears that either claim 6 or 7 should be referenced in line 2 of claim 8 rather than claim 2. Claim 9 inherits the problem of claim 8 through dependency. Correction/clarification is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 12/1, 13/1 and 16/1 rejected under 35 U.S.C. §102(e) as being anticipated by Marchand et al (US 6,914,613 B2).

Marchand et al disclose a computer-implemented method for determining a color matched repair paint formula, said computer-implemented method comprising: a) identifying the color characteristics of a target color to be matched (column 9, lines 19-25); b) inputting and processing said target color characteristics to enable a visual display of said target color (column 9, lines 24-26); c) selecting from a

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color database, an alternate color, or a plurality of alternate colors, said selection made based upon color characteristics of said target color to be matched (column 9, lines 24-26); d) processing and visually displaying said alternate color, or plurality of alternate colors, to enable comparison with said target color (column 8, lines 59-62 and column 9, lines 27-31); and e) selecting a desired alternate color and determining the formulation thereof (column 9, lines 40-47). Applicant's attention is directed to Marchand et al in its entirety.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. § 102(e). This rejection under 35 U.S.C. § 102(e) might be overcome either by a showing under 37 CFR § 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR § 1.131.

#### *Additional Prior Art*

Rice et al. (US 6,563,510 B1) disclose a paint color matching method comprising receiving an input reference color; selecting a reference paint color from a database of architectural paint colors by comparing the input reference color for likeness with the paint colors from the database; and displaying color samples.

#### *Allowable Subject Matter*

Claims 6, 7, 10, 11 and 12/6-16/6 are allowed over the prior art of record.

Claims 2-5 and 14/1 and 15/1 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 2, the prior art of record, taken alone or in combination, fails to disclose or render obvious a computer-implemented method for determining a color matched repair paint formula

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comprising the step of displaying the target color superimposed over an image of a vehicle to be repaired, in combination with the rest of the limitations of the claim.

As to claim 5, the prior art of record, taken alone or in combination, fails to disclose or render obvious a computer-implemented method for determining a color matched repair paint formula wherein the step of selecting from a color database, an alternate color, or a plurality of alternate colors, is further made on the basis of metamerism, or metamerism index, in combination with the rest of the limitations of the claim.

As to independent claim 6, the prior art of record, taken alone or in combination, fails to disclose or render obvious a computer-implemented method for determining a color matched repair paint formula comprising the steps of visually displaying flake appearance options for the alternate color, or plurality of alternate colors and selecting a desired alternate color and determining the formulation thereof, in combination with the rest of the limitations of the claim.

As to claims 14/1 and 15/1, the prior art of record, taken alone or in combination, fails to disclose or render obvious a computer-implemented method for determining a color matched repair paint formula comprising the features set forth in lines 1-5 of each claim, in combination with the rest of the limitations of the claims.

#### *Fax/Telephone Numbers*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (571) 272-2414.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**F. L. EVANS**  
**PRIMARY EXAMINER**  
**ART UNIT 2877**

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February 3, 2006